

Edward Cohen

Call: 1972
 Education: MA (Cantab)
 Appointments: Head of Chambers
 Recorder
 Languages: Working knowledge of French & Spanish
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He has continuously practised at the Bar since 1973 and since 2000 has sat as a Recorder. He is a founder member of his present Chambers which were established in 1975 and became Head of Chambers in October 2004.

Edward practises in commercial and chancery litigation and advisory work, including commercial contracts of all kinds, partnerships and LLPs, company law issues including shareholder disputes, media, entertainment and sport including recording, publishing, agency and management contracts, professional negligence, civil fraud, including injunction proceedings, banking, guarantees and other securities, arbitration law and practice, commercial property, corporate and personal insolvency, breach of employment duties and IT disputes. His wide-ranging practice enables him to advise and act in individual cases involving simultaneously different areas of law. He is known for his meticulous preparation, paperwork and advocacy and he has appeared in reported decisions ranging from the House of Lords through to the Court of Appeal and Courts of first instance involving diverse legal issues. He appeared as junior counsel at all stages up to and including the House of Lords in the leading contract case of *Walford v Miles* [1992] 2 AC 128, a decision establishing the unenforceability under English law of agreements to negotiate/agreements to agree. More recently he led the successful resistance to an appeal before the Privy Council in *Knox v Deane* [2005] UKPC 25, a case involving a pre-emption clause in a company's articles of association. Edward is well known for his dedicated support of Newcastle United FC.

Edward has been recommended as a leading Commercial Chancery practitioner in Chambers & Partners for several years. Comments about Edward in Chambers & Partners include:

Head of chambers Edward Cohen is seen as a "delight to work with."

Head of chambers Edward Cohen was unanimously hailed as "a tactical and polished advocate," meriting additional mention as "one of the quiet, legal geniuses of the Bar."

Edward Cohen is known both for his wealth of experience in chancery-related matters and for his industrious and focused approach.

"His paperwork is a pleasure," said clients of Edward Cohen who is valued notably for his "measured and conscientious approach". One client commented: "He has one of the most incisive legal brains at the Bar."

Recent cases for Edward include:

I-Remit Incorporated v Far East Express Remittance Limited & Ors. [2008] EWHC 939 (Ch)

Third Party Costs Orders

David Richards J. made a third party costs order against the sole directors and shareholders of a company against whom the Claimant had obtained judgment for both a substantial sum and costs but which had gone into liquidation and was unable to pay. The principal ground upon which the third party costs order was made was that the 2 directors and shareholders had controlled the unsuccessful defence and counterclaim, that they had funded it to a substantial extent and that success would have been largely for their own personal benefit.

Tasarruf Mevduati Sigorta Fonu v Demirel [2007] 4 All ER 1014

Jurisdiction – Fraud

This was a decision of the Court of Appeal (on appeal from the Chancery Division) involving consideration of the proper scope of CPR 6.20(9) (claims to enforce foreign judgments or arbitral awards) and of relevant considerations for the

Court in deciding whether to grant permission to serve out of the jurisdiction under that Rule. It related to the attempted enforcement of a Turkish judgment for US\$ 30 million plus interest arising out of the collapse of Turkish banks amid allegations of fraud. Edward acted as sole Counsel for the Appellant (as he had done at first instance), the Respondent being represented by both Leading and Junior Counsel.

Sectrack NV v Satamatics Limited & Anor. [2007] EWHC 3003 (Comm)

Commercial – Injunctions – Contract – Confidential Information

This was a decision of Flaux J. in the Commercial Court on an application for the continuation of an interim injunction. The case involved disputed allegations of breach of a distribution agreement relating to satellite communications equipment and of misuse of confidential information. The judgment contains, in particular, interesting observations about the test to be applied in deciding whether information relating to customers contained in a computer and e-mail system can properly be categorised as confidential information so as to be protectable by injunction and the principles to be applied in deciding whether or not to grant/continue springboard injunctions, as well as a useful analysis of the principles of non-disclosure in applying for without notice injunctive relief.

Funtime Creations Limited v Photo-Me International Plc & Ors. [2007] EWHC 47 (QB)

Jurisdiction – Employment Contracts

This was a decision of Judge Hegarty QC in the Manchester Mercantile Court on an application made by Edward on behalf of one of the parties challenging the jurisdiction of the Court. The main issue was whether the claims in question were claims “In matters relating to individual contracts of employment” so as to give exclusive jurisdiction in this case to Northern Ireland. The Judge granted the application on the basis that all of the claims made apart from one minor claim related to individual contracts of employment, even though the causes of action were not all expressed as claims for breach of a contract of employment but also included allegations of conspiracy and breaches of fiduciary duty. The Judge held that the Court should consider not so much the technical causes of action alleged but rather whether as a matter of substance the claim was essentially tortious or one relating to a contract of employment. There was also a useful analysis of the law relating to submission to the jurisdiction, a further argument unsuccessfully advanced to resist the jurisdictional challenge.

LLP Case

He acted on behalf of various members of a technology LLP in substantial Chancery proceedings in which serious allegations of wrongdoing and breaches of duty were made. The case was settled on confidential terms on the first day of the trial.

Antigua Proceedings

He has been involved in substantial proceedings in Antigua (both at first instance and in the Court of Appeal) in which specific performance has been successfully obtained by his client of a contract for the sale of shares in an Antiguan company owning very valuable development property in Antigua. He has been closely involved at the various stages of the litigation and in providing written submissions and skeleton arguments and legal research for local counsel. Instructed via London solicitors and a New York lawyer.

Microsoft Litigation

He was instructed by one of the Defendants in substantial infringement proceedings in the Chancery Division in which extensive interim relief was obtained, the alleged claim against his client being ultimately settled on a satisfactory basis.

Knox v Deane [2005] BCC 884

Companies – Shareholder Rights

Privy Council

Edward led the resistance to this appeal from the Court of Appeal of Barbados. It involved the construction of a pre-emption provision in a company's articles of association and, in particular, whether under that provision existing shareholders had priority over a person selected by the directors as being a desirable shareholder. The Privy Council accepted Edward's submission that the proper construction was that the right of the selected person was not subordinate but alternative to the right of the shareholders and the choice of alternative was left to the discretion of the directors, so that the appeal was dismissed. Note that in view of the setting up of a Caribbean Court of Appeal, this may be one of the last or perhaps even the last civil appeal to the Privy Council from Barbados.

Debentures – Companies – Insolvency

Edward (with Gabriel Moss QC) acted for the successful Claimants who were seeking declarations of their ownership of various petroleum licences and shares in a company. The Claimants' case was that they had acquired the assets from Receivers of the selling companies who had been appointed pursuant to debentures, whereas the Defendants contended that they had previously acquired the assets pursuant to various transactions. The case raised an important point of principle as to the meaning and scope of a clause incorporated into a debenture permitting disposals "in the ordinary course of its business", a point on which there was no modern English authority. The Judge gave detailed guidance as to how to approach the question of whether transactions were in the ordinary course of business for the purposes of such a clause and concluded on the evidence that the disposals to the Defendants had not been in the ordinary course of business.

Venture Finance plc v Mead & Anor. [2005] EWCA Civ 325

Costs – Appeals – Revising Judgments

This decision of the Court of appeal in which Edward acted for one of the Defendants raised the question of whether one of 2 guarantors under separate guarantees should be liable for all of the Claimant's costs of the proceedings or only for 50% of those costs. The judge had decided that the latter should be the case but he was overruled. In the lead Judgment, Chadwick L.J. considered the very limited circumstances in which an appellate court should interfere with the decision of a judge as to costs where he had been asked to decide the question of costs without having decided the substantive issues at trial (as was the case here). He also stated that a judge should usually decline to make a decision solely on costs in such circumstances unless he had a proper basis of agreed or determined facts. Arden L.J. gave further guidance about how judges should react if, after judgment, the losing advocate or party states that the Judge has failed to deal with a point (perish the thought!). In those circumstances if the Judge thought that he had overlooked a point which undermined his original decision, he might have to give judgment again and might legitimately reach a different or opposite conclusion.